

April 2, 2008

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22/980

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024

RE: Finance Docket No. 35126
Pro-Go Corp. – Operation Exemption –
In Suffolk County, NY

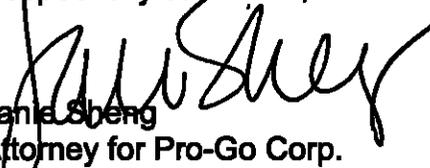
ENTERED
Office of Proceedings
APR - 2 2008
Part of
Public Record

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding is an original and ten copies of the **Verified Notice of Exemption** dated April 2, 2008. A check in the amount of \$1,600.00, representing the appropriate filing fee for the Verified Notice of Exemption, is also enclosed.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgement copy and returning it to our messenger.

Respectfully submitted,


Janie Sheng
Attorney for Pro-Go Corp.

Enclosures

FEE RECEIVED
APR - 2 2008
SURFACE
TRANSPORTATION BOARD

FILED
APR - 2 2008
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35126

PRO-GO CORP.
-- OPERATION EXEMPTION --
IN SUFFOLK COUNTY, NY



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VERIFIED NOTICE OF EXEMPTION
OF
PRO-GO CORP.
PURSUANT TO 49 C.F.R. § 1150.31

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SURFACE
TRANSPORTATION BOARD

Kevin M. Sheys
Janie Sheng
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street, NW
Washington, DC 20006
(202) 778-9000

**ATTORNEYS FOR
PRO-GO CORP.**

Dated: April 2, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35126

PRO-GO CORP.
-- OPERATION EXEMPTION --
IN SUFFOLK COUNTY, NY

**VERIFIED NOTICE OF EXEMPTION
OF
PRO-GO CORP.
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31 et seq., Pro-Go Corp. ("Pro-Go"), a non-carrier, hereby files this Verified Notice of Exemption to operate a rail line extending between approximately milepost 50 on the Long Island Railroad to approximately milepost 52, all in Holtsville, Long Island (the "Subject Line"). The Subject Line consists of two parallel tracks totaling approximately 4,000 feet and a third track totaling approximately 650 feet leading to a propane unloading rack. The total distance of the Subject Line is approximately 1.0 route mile within Suffolk County, NY. Based on projected revenues, Pro-Go expects to become a Class III rail carrier once it begins freight rail common carrier operations on the Subject Line.

In accordance with the requirements of 49 C.F.R. § 1150.33, Pro-Go submits the following information:

49 C.F.R. § 1150.32(e)
ADVANCE NOTICE

The projected annual revenue from the Subject Line will not exceed \$5 million.
Accordingly, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this transaction.

49 C.F.R. § 1150.33(a)
NAME AND ADDRESS OF APPLICANT

The full name and address of the applicant is as follows:

Pro-Go Corp.
c/o Mr. Steven Pinks
140 Fells Court
Hauppauge, NY 11788

49 C.F.R. § 1150.33(b)
APPLICANT'S REPRESENTATIVE

Pro-Go's representative to whom correspondence regarding this transaction
should be addressed is as follows:

Kevin M. Sheys
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street, NW
Washington, DC 20006
(202) 778-9000

49 C.F.R. § 1150.33(c)
STATEMENT CONCERNING AGREEMENT¹

In 1988, Prima Asphalt Concrete, Inc. ("Prima")² conveyed a license to Pro-Go
(the "License Agreement") allowing Pro-Go to use the railroad trackage located on

¹ This particular Verified Notice of Exemption contains information beyond what is normally contained in a notice of exemption under 49 C.F.R. § 1150.31 et seq. because of the Board's decision in STB Finance Docket No. 35120 rejecting the prior notice filed by Pro-Go.

² Prima and Pro-Go are under common ownership. William Fehr and Ronald Fehr own both Prima and Pro-Go.

Prima's property to offload stone, propane and other products delivered by a freight common carrier³ for Pro-Go's sister corporation, Prima. Pro-Go never received compensation for the offloading services.

On November 6, 2007, Prima contacted Hartford & Associates, Inc. to analyze whether a railroad enterprise utilizing the Subject Line would be a profitable business.⁴ Having done the analysis, Pro-Go has decided to commence providing freight rail common carrier service over the Subject Line. A copy of the License Agreement is attached hereto as **Exhibit A**. The 1988 License Agreement gives Pro-Go sufficient rights to conduct freight rail common carrier operations on the Subject Line.⁵

The railroad trackage that is the subject of this Notice consists of three pieces of track. All of the relevant trackage was built between 1963 and 1988, and exists today. The original purpose of the trackage was to allow Prima to receive stone and other products delivered by a common carrier railroad. Beginning in 1988, Pro-Go handled the offloading of such products for its sister corporation Prima,⁶ but thus far, Pro-Go has never conducted freight rail common carrier operations over the Subject Line. After analyzing the potential for establishing a for-hire railroad enterprise utilizing the Subject Line, Pro-Go has concluded that such an enterprise could be a profitable business.

³ In 1988, the freight common carrier was the Long Island Railroad Company. Today, the freight common carrier is the New York & Atlantic Railway.

⁴ Pro-Go simultaneously has filed a Petition for Reconsideration of its original Verified Notice of Exemption in STB Finance Docket No. 35120. A copy of the report has been filed under seal subject to a Motion for Protective Order in that docket.

⁵ Part of the trackage to be operated pursuant to this Notice is owned by Pro-Go as a result of the conveyance from Max Fehr to Pro-Go (as further discussed below).

⁶ Pro-Go has no corporate affiliation with any of the shippers located on the trackage or potential customers cited in the Business Plan.

Pro-Go now wishes to commence freight rail common carrier operations over the Subject Line; hence, it now seeks operating authority from the Board.⁷

49 C.F.R. § 1150.33(d)
OPERATION OF THE PROPERTY

Pro-Go will operate the Subject Line on or soon after the date this Verified Notice of Exemption becomes effective.

49 C.F.R. § 1150.33(e)
SUMMARY OF THE TRANSACTION

Prima, a non-carrier, is the owner of the underlying physical assets that constitute the Subject Line.⁸ Prima's address is as follows:

Prima Asphalt Concrete, Inc.
615 Furrows Road
Holtsville, New York 11742

⁷ In or about 1961, Max Fehr purchased property in Holtsville, New York and in or about 1963, he conveyed five acres of the property to Prima. Between 1963 and 1964, Prima constructed a track with a switch to the main line on the east end. A portion of the railroad track was on the property owned by Prima and the remainder was built on an easement granted by Max Fehr to Prima. In 1972, a second track was constructed with switches for both tracks to the main line on the east and west end of the spur. At or about the same time, Prima built an asphalt and concrete manufacturing plant on its property. Pro-Go was established in 1988 at which time Max Fehr conveyed a one-acre parcel of land to Pro-Go upon which a portion of the railroad track existed. Thereafter, the third piece of railroad track was constructed on the Pro-Go property.

⁸ Prima has not needed Board authorization in the past because it has never conducted freight common carrier operations. Nor does Prima require Board authorization for this transaction. The Board has consistently held that the non-carrier owner of the underlying physical assets of a railroad does not require Board authorization when the common carrier rights and obligations are not being transferred to that owner. See, e.g., Midtown TDR Ventures LLC – Acquisition Exemption – American Premier Underwriters, Inc., The Owasco River Railway, Inc., and American Financial Group, Inc., STB Fin. Docket No. 34953 (Feb. 11, 2008) (citing Maine, DOT – Acquisition Exemption – Maine Central R. Co., 8 I.C.C.2d 835 (1991)).

On or soon after the date this Verified Notice of Exemption becomes effective, Pro-Go intends to provide freight rail common carrier service on the Subject Line between approximately milepost 50 on the Long Island Railroad and approximately milepost 52, a total distance of approximately 1.0 route mile in Suffolk County, NY. Pro-Go intends to provide freight rail common carrier service to any customer requiring service on the Subject Line.

49 C.F.R. § 1150.33(f)
MAP

A map meeting the requirements of 49 C.F.R. § 1150.33(f) indicating the area served by the Subject Line is attached as **Exhibit B** to this Notice. The Subject Line is one route mile of track and therefore constitutes a single origin and termination point. There are no station designations and the entire Subject Line is located in Holtsville, New York in Suffolk County.

49 C.F.R. § 1150.33(g)
CERTIFICATION OF CLASS III STATUS

A certificate complying with the provisions of 49 C.F.R. § 1150.33(g) is attached as **Exhibit C** to this Notice. Based on projected revenues for the Subject Line, Pro-Go will become a Class III rail carrier after it begins freight rail common carrier operations on the Subject Line.

49 C.F.R. Part 1105
ENVIRONMENTAL/HISTORIC PRESERVATION DATA

Under 49 C.F.R. § 1105.6(c)(2), the proposed operation of the Subject Line by Pro-Go is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations (i.e., changes which exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5)).

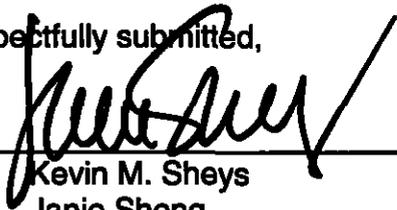
Under 49 C.F.R. § 1105.8(b)(1), the proposed operation of the Subject Line by Pro-Go also is exempt from historic preservation reporting requirements. Pro-Go's operation of the Subject Line is for the purpose of providing rail operations thereon. Further Surface Transportation Board approval is required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

49 C.F.R. § 1150.34
CAPTION SUMMARY

A caption summary in the appropriate form is attached as **Exhibit D** to this Notice.

Respectfully submitted,

By: _____


Kevin M. Sheys
Janie Sheng

Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street, NW
Washington, DC 20006
(202) 778-9000

ATTORNEYS FOR PRO-GO CORP.

Dated: April 2, 2008

Exhibit A

LICENSE AGREEMENT

AGREEMENT made this 10th day of October, 1988 between Prima Asphalt Concrete, Inc., a New York corporation having its principal place of business at 615 Furrows Road, Holtsville, New York 11742 ("Licensor") and Pro-Go Corp., a New York corporation having its principal place of business at 615 Furrows Road, Holtsville, New York ("Licensee").

WHEREAS, the Licensor and Licensee are the owners of real property in Holtsville, New York upon which is constructed a railroad spur and trackage between approximately Mile Post 50 on the Long Island Railroad and Mile Post 52 which consists of two parallel tracks totaling approximately 4,000 feet and a third track totaling approximately 650 feet (the "Trackage"); and

WHEREAS, Licensee is engaged in the business of receiving and storing propane and other industrial products; and

WHEREAS, Licensee desires to obtain and Licensor is willing to grant a non exclusive license to enter Licensor's property and to use the Trackage located thereon.

NOW, THEREFORE, in consideration of \$1.00 and other good and valuable consideration, it is agreed as follows:

1. Grant of License: Licensor grants to Licensee a non-exclusive license to enter its property from time to time for the sole purpose of using the Trackage including, but not limited to, the use of a portion of its real property for the loading and unloading of freight shipped by rail carrier to or from the Trackage.

2 Payment: Licensee shall pay Licensor fees which are determined by the parties to be fair and reasonable for the particular purposes Licensee is using the Trackage for. All fees shall be agreed to between the parties prior to actual use of the Trackage by the Licensee.

3. Term: This License shall have a term of 99 years from the date of this Agreement cancelable upon 60 days" written notice by either party only in the event of the following:

a. Sale by the Licensor of the real property upon which the Trackage is located; or

b. Mutual agreement between the parties.

4 Restrictions on Licensee: Licensee is not

authorized, either expressly or impliedly, to incur any expense or perform any business function of any nature or kind in connection with the business of the Licensor without the express written approval of Licensor.

5. Promotions: Licensor will cooperate in all advertising, promotions and publicity in connection with the permit granted to the Licensee pursuant to this Agreement.

6 Notices: Any notice required to be given hereunder shall be deemed given if sent to the parties at the addresses designated herein.

7. Construction: This Agreement shall be governed in all respects by the laws of the State of New York.

8 Entire Agreement: This agreement contains the entire agreement between the parties and no changes shall be effective unless in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the Licensor and Licensee have set their hand and seal the day and year first above written.

PRIMA ASPHALT CONCRETE, INC.
Licensor

By: _____

PRO-GO CORP.
Licensee

By: _____

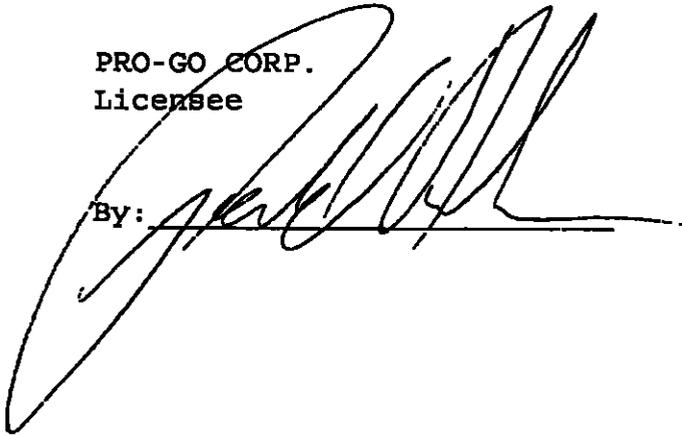
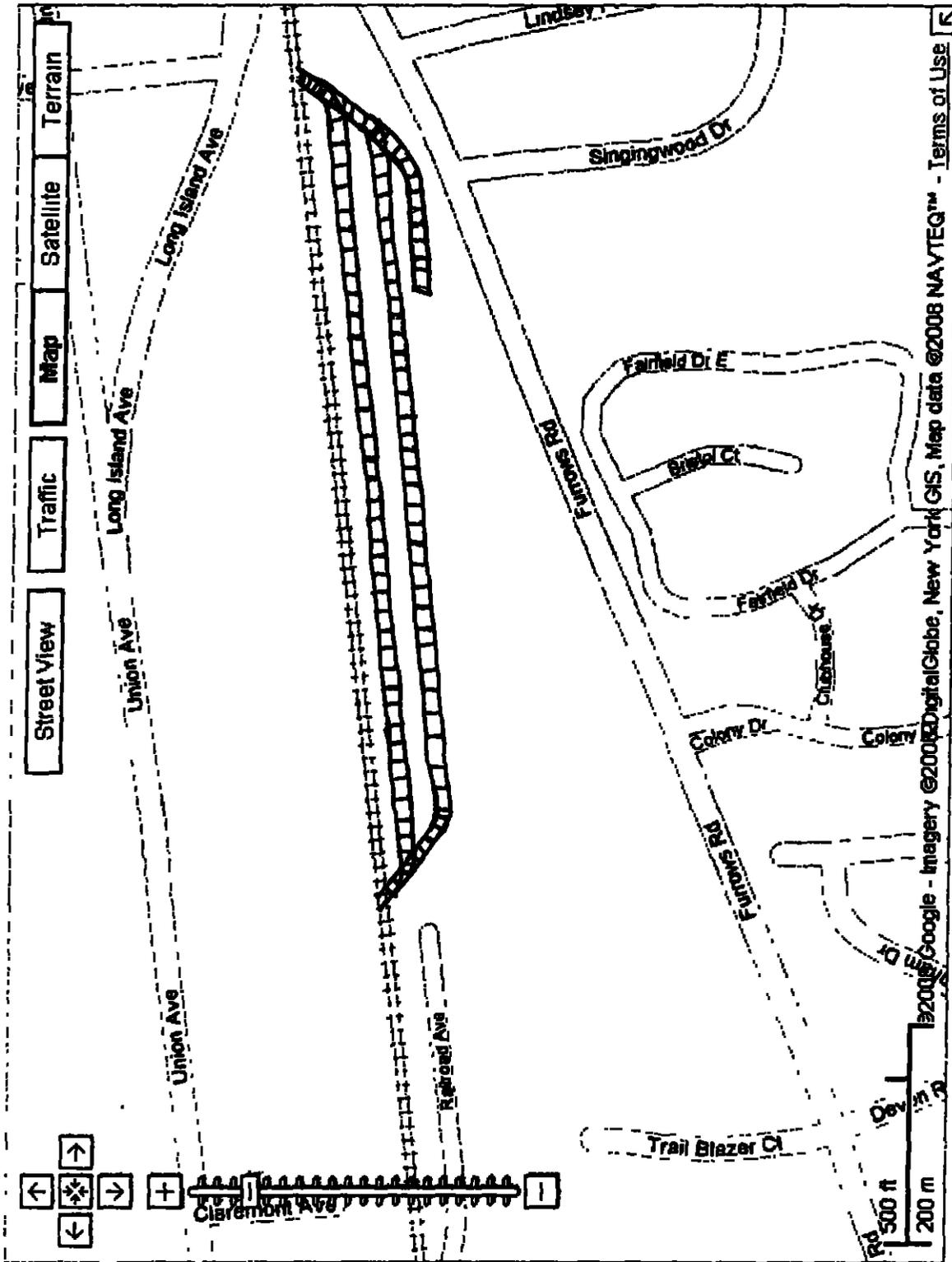
A large, stylized handwritten signature in black ink is written over the horizontal line of the signature line. The signature is highly cursive and difficult to decipher, but it appears to consist of several overlapping loops and strokes.

Exhibit B



III Subject Line

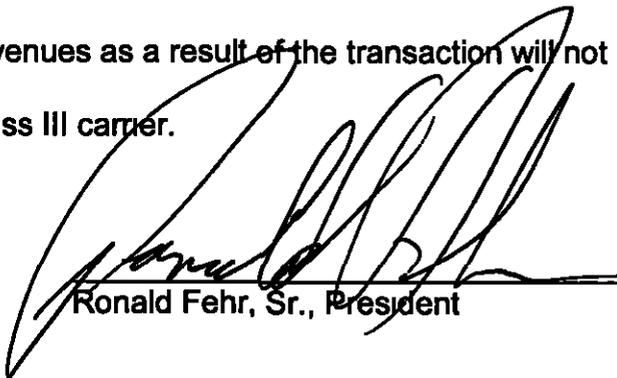
Exhibit C

Exhibit C
CERTIFICATION

STATE OF NEW YORK)
)
) SS:
COUNTY OF Suffolk)

Ronald Fehr, Sr., being duly sworn, deposes and says that he is the President of Pro-Go Corp., and that to the best of his knowledge, information and belief

Pro-Go Corp.'s projected freight revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.



Ronald Fehr, Sr., President

SUBSCRIBED AND SWORN to

Before me this 1st day

Of April, 2008

Karen Rotan

Notary Public

My Commission expires: 2009

KAREN ROTAN
Notary Public, State of New York
No. 01R06066405
Qualified in Suffolk County
Commission Expires November 13, 2009

Exhibit D

Exhibit D

CAPTION SUMMARY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35126

**PRO-GO CORP.
-- OPERATION EXEMPTION --
IN SUFFOLK COUNTY, NY**

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This notice is filed under § 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten (10) copies of all pleadings referring to STB Finance Docket No. 35126 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, DC 20423. In addition, a copy of

each pleading must be served on: Kevin M. Sheys, Kirkpatrick & Lockhart Preston

Gates Ellis LLP, 1601 K Street, NW, Washington, DC 20006; (202) 778-9000.

Date: _____, 2008

**By the Board
Anne B. Quinlan, Esq., Acting Secretary**

